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10 March 2016

Director Operations 1
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3011

Investigation into rod in coil exported from the Peoples Republic of China

Dear Director,

This submission is made by Jiangsu Shagang (Shagang) in response to the Anti-Dumping Commission's (the Commission) material injury assessment outlined in Statement of Essential Facts Report No. 301 (SEF 301).

Material injury assessment

At the outset, Shagang wishes to express its concerns with the lack of detailed analysis and proper reasoning contained in SEF 301 to support the Commission's preliminary findings. Shagang considers that the material injury assessment in SEF 301 is not based on facts or positive evidence. Instead the preliminary findings stem from conjecture and baseless assumptions, and as such, falls well short of the standard expected from an objective investigating authority.

'Actual injury' indicators

Throughout this submission, Shagang commonly refers to 'actual injury' to describe the tangible levels and observed trends in the applicant's injury indicators. By contrast, Shagang refers to 'hypothetical injury' to describe the notional levels and unseen trends upon which the Commission's causation findings are based.

Shagang notes the following findings of fact outlined in SEF 301 and the Preliminary Affirmative Determination Report 301 (PAD 301) in relation to the actual injury found to have occurred over the injury analysis period and the investigation period.

Price depression

As noted in SEF 301, *"[p]rice depression occurs when a company, for some reason, lowers its prices."* The Commission goes on to analyse the applicant's selling prices depicted in Graph 3 of SEF 301 by stating:

> *The graph demonstrates that since the start of the Q1 2014 the market has shown indications of significant price pressure at several times. The most recent price fall trend aligns with the commencement of Chinese imports from Q4 2014 onwards. There has been a sustained reduction in price relative to prior years. The Commission has identified that OneSteel has been injured through price depression.*

Shagang submits that the Commission's assessment of price depression is incredibly restricted and distorted in its analysis. Firstly, it is noted that the injury analysis period defined by the Commission commences from 1 July 2011, yet the prices shown in Graph 3 commence from quarter 1 of 2012. The importance of this discrepancy is evident when the movement in the applicant's selling prices are compared between those in Graph 3 of SEF 201 and the corresponding Figure 4 of Final Report 240 (REP 240).

Report 240 outlined the Commission's recommendations and accepted findings in respect of rod in coil exports from Indonesia, Taiwan and Turkey. The investigation period and injury analysis period for Investigation No. 240 was 1 January 2013 to 31 December 2013 and 1 January 2010 to 31 December 2013, respectively.

As highlighted below in Figure 4 from REP 240 and concluded by the Commission in that report, *"[i]t is evident from figure 4 that OneSteel has steadily reduced its selling price since 2011, which is consistent with the claims made in its application, and indicative of price depression."*

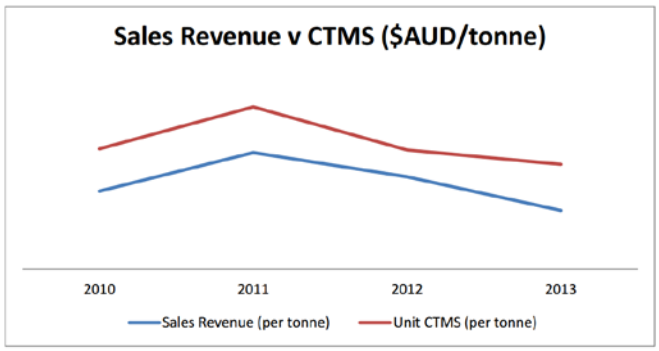


Figure 4 – Sales revenue per tonne vs CTMS per tonne

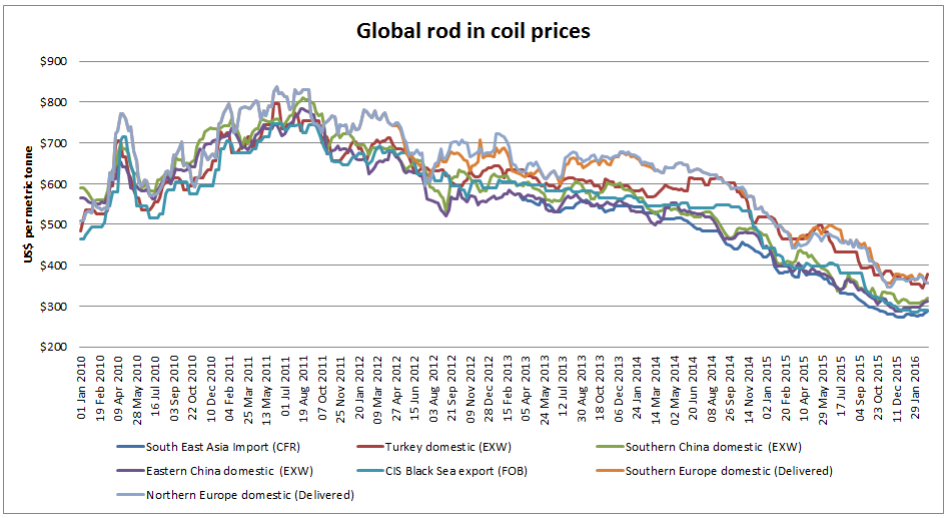
Therefore, it is misleading for the Commission to conclude in SEF 301 that *"since the start of the Q1 2014 the market has shown indications of significant price pressure at several times."* As found by the Commission in REP 240, the applicant's selling prices have been in decline since 2011.

To properly assess and explain the trends in the applicant's selling prices, Shagang requests that the Commission alter its Graph 3 in SEF 301 to properly capture prices from the beginning of 2011 and to present the movement on an annual basis to remove any bias in the data due to short-term fluctuations and possible seasonality.

On that revised pricing graph, Shagang expects that the Commission will find that the applicant's selling prices have been in decline since 2011 and continued on that trend into the 2014-15

investigation period for this investigation. This revised chart is also expected to discredit the Commission's finding that "*[t]he most recent price fall trend aligns with the commencement of Chinese imports from Q4 2014 onwards*" as the Commission has previously determined that the applicant's prices have experienced significant depression since 2011.

Further, it is also important to distinguish the actual and observed prices trends experienced by the applicant in the Australian market and the observed trends in global rod in coil prices. To highlight by example, the chart below shows the movement in rod in coil prices across numerous domestic and export markets since 2010. It is worth noting that the observed trend in rod in coil prices in these markets are very similar to those shown in Figure 4 of REP 240 and expected to show in the revised Graph 3 of SEF 301 as requested earlier.



Source: Steelfirst.com

It is again misleading to even suggest that the entry of Chinese imports of rod in coil into the Australian market in quarter 4 of 2014, are in some way responsible for declining prices, when the applicant's prices have been, consistent with trends observed in various other markets, in decline since 2011.

It is therefore incumbent on the Commission to examine and explain any differences and similarities between the actual trend in the applicant's selling prices and those observed trends for rod in coil prices evident in other markets around the world. This is critical to understanding whether the applicant's prices simply reflect the normal ebb and flow of rod in coil, "*[g]iven that rod in coils is a commodity product freely traded on the world market.*"[1]

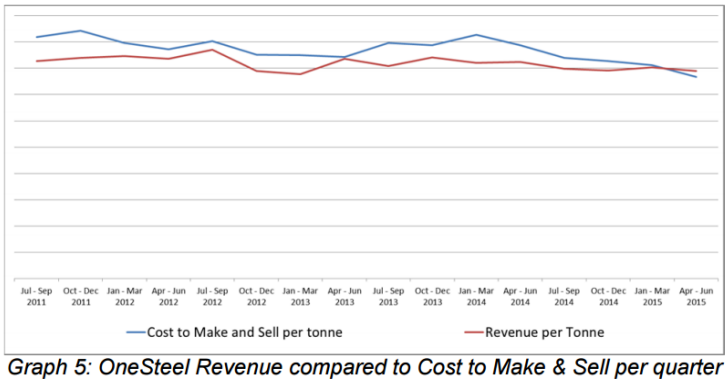
Price suppression

It is noted that SEF 301 contains no graphical representation and accompanying analysis of the applicant's actual and observed comparison of prices and costs to explain whether price suppression is evident. It is however noted that PAD 301 did contain such a graph. Graph 5 of PAD 301 shown below, shows that since July 2011, applicant's average unit net selling prices have consistently been below the corresponding average unit cost to make and sell through to March quarter 2015.

[1] EPR 301, Record no. 003, OneSteel Manufacturing Pty Ltd Application, page 69.

It would appear that in March quarter 2015, the applicant's prices were at least on par with costs, before exceeding costs in June quarter 2015. It is also important to note that import volumes of rod in coil from China prior to the March quarter 2015, were negligible as they had only just entered the Australian market.

Therefore, it is clear that any observed price suppression during the investigation period by the applicant, occurred prior to the subject imports entering the Australian market. During the second half of the investigation period when the subject imports had established themselves in the Australian market, the applicant experienced no further price suppression.



Graph 5: OneSteel Revenue compared to Cost to Make & Sell per quarter

Volume effects

It is noted that the Commission has concluded that there is not sufficient evidence to support the applicant's claim that it has suffered injury in the form of lost sales volumes or reduced market share. Shagang supports this finding and considers the following facts strengthen the Commission's view:

1. Shagang notes that the other major importer of rod in coils from China, Vicmesh Pty Ltd (Vicmesh), does not appear to have previously sourced the subject goods locally. Instead, as noted in the Vicmesh importer visit report, "*Vicmesh has traditionally imported a significant portion of its requirements from New Zealand but subsequent to changes in ownership of Pacific Steel during first half 2014 (now Bluescope) and facing abrupt cut off in supply, began sourcing from alternative suppliers such as Taiwan, Indonesia and China etc*". Therefore, it is simply an assertion for the applicant to suggest that its volumes would likely have increased if not for the subject imports from China.
2. It is also noted that [redacted] [market sales information]. Therefore, it is clear that import substitution has occurred and that in a market without the subject imports, [redacted] [market sales information].

These points are supported by Graph 2 in PAD 301 which confirms that import substitution has occurred.

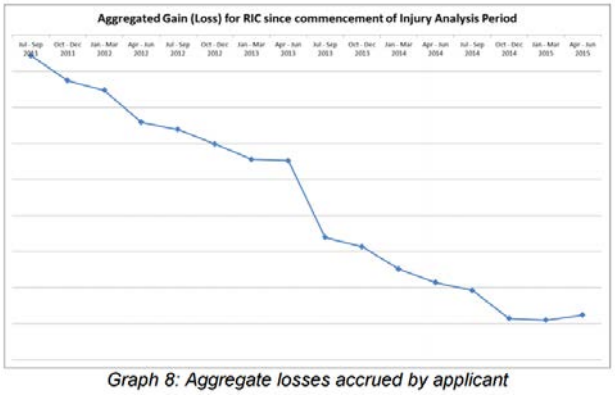
Shagang also questions the relevance of the Commission's analysis accompanying Graph 2 of SEF 301 and the accuracy of the graph itself, which attempts to depict a correlation between the applicant's declining selling prices and its increasing market share. Firstly, it is expected that a commodity product such as rod in coil that is found by the Commission to be price sensitive, would result in

increased market share where prices are reduced. The overlooked question that the Commission should be asking but does not appear to have answered, is how in such a market, is the applicant able to increase its market share in circumstances where the prices of subject and non-subject imports are found to be significantly undercutting the applicant's net selling prices.

Profits

As stated by the Commission in SEF 301, the applicant's *"Steel division has not reported a positive sales margin or EBIT for the segment"* over the entire injury period. Given that subject imports had not entered the Australian market prior to the December quarter of 2014, all losses incurred by the applicant during these prior years cannot be attributed to the subject imports.

It is noted that during the investigation period, the applicant's earnings and sales margin improved when compared to the performance in the previous two financial years. This is further supported by Graph 8 of PAD 301 shown below, which depicts the aggregated losses incurred by the applicant since the start of the injury analysis period in this investigation. It shows that the aggregated losses have continued to grow until the December quarter of 2014, when those losses stabilised and for the first time over the five-year analysis period, the applicant's aggregated losses showed a reduction in the June quarter of 2015.



Graph 8: Aggregate losses accrued by applicant

Finally, Shagang wishes to highlight that the applicant's aggregated losses are even greater than those show in Graph 8 of SEF 301. When including the applicant's losses during 2010 and the first half of 2011, which as shown in the chart below from REP 240 were the periods when the applicant's losses were at their greatest, the recent improvement in the applicant's profit performance is even further magnified. Again, the primary issue that the Commission should be examining and explaining is why the applicant's sales of rod in coil have historically and consistently been unprofitable.

Separation and isolation of other known factors

Non-subject imports

Shagang is particularly disappointed with the Commission's consideration of other known factors in ensuring that the subject imports are separated and distinguished from the injurious effects of the other known factors. Shagang submits that the Commission's analysis is inadequate for isolating the impact from non-dumped sources and properly identifying the price effects attributable to the subject imports.

Subsection 269TAE(2A) of the Act requires that the Minister must consider whether any injury '*is being caused or threatened by a factor other than the exportation of those goods such as:*

(a) the volume and prices of imported like goods that are not dumped;'

This important element of causation is reflected in the *Ministerial Direction on Material Injury*[2] which makes clear that injury caused by other factors must not be attributed to dumping or subsidisation. The obligation to ensure non-attribution is found in Article 3.5 of the ADA and has been interpreted by the Appellate Body in US – Hot rolled steel[3], which ruled:

> *The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not 'attributed' to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties.*
>
> *We emphasize that the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors are not prescribed by the Anti-Dumping Agreement. What the Agreement requires is simply that the obligations in Article 3.5 be respected when a determination of injury is made.*

The Appellate Body added[4]:

> *[A]lthough this process may not be easy, this is precisely what is envisaged by the non-attribution language. If the injurious effects of the dumped imports and the other known factors remain lumped together and indistinguishable, there is simply no means of knowing whether injury ascribed to dumped imports was, in reality, caused by other factors. Article 3.5, therefore, requires investigating authorities to undertake the process of assessing appropriately, and separating and distinguishing, the injurious effects of dumped imports from those of other known causal factors.*

Therefore, it is abundantly clear that before concluding that the subject imports have caused injury found to be material, the Commission is required to isolate the effects of other known factors. For this reason, Shagang contends that the Commission's preliminary material injury

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[2] Australian Customs Dumping Notice No.2012/24

[3] Appellate Body Report, US – Anti-Dumping Measures on Hot-Rolled Steel products from Japan, WT/DS184/AB/R, para 223; pages 74-75.

4 Ibid., para 228, page 76.

finding is defective as there has been consideration of the effects of non-dumped imports, let alone any attempt to isolate those effects.

In fact, the Commission's brief discussion of non-dumped imports in SEF 301 is both misleading and a distortion of the facts accepted by the Parliamentary Secretary in REP 240. The Commission highlights that prior to the commencement of the subject imports in December quarter 2014, *"imports were primarily sourced from Indonesia, Taiwan and Turkey (Investigation 240 refers) and findings were made that these imports included dumped goods. As such, the Commission considers that there is a limited period when the Australian market was not affected by dumping."*

Firstly, non-dumped imports from New Zealand were the largest source of imports across the injury analysis period of REP 240. During the 2013 investigation period, Indonesian imports became the largest source of imports, followed next by non-dumped imports from New Zealand and then non-dumped and non-injurious imports from Turkey. Of the Indonesian imports during that period, approximately [redacted]% were supplied by [redacted] and found to be non-dumped. The remaining volume of Indonesian imports found to be dumped during the investigation period, accounted for approximately 1.1% of the total Australian market. Likewise, dumped imports from Taiwan accounted for 1% of the Australian market.

Therefore, during the period prior to the commencement of the subject imports, the Australian market was supplied by the following sources and their respective shares:

1. OneSteel Manufacturing Pty Ltd accounting for 82.7% of the market;
2. non-dumped imports by [redacted] from Indonesia accounting for [redacted]% of the market;
3. non-dumped imports from New Zealand accounting for 6.2% of the market;
4. non-dumped imports from Turkey accounting for 2.3% of the market;
5. dumped imports by PT. Gunung Rajapaksi from Indonesia accounting for 1.1% of the market;
6. dumped imports by Quintain Steel Co Ltd from Taiwan accounting for 1% of the market; and
7. non-dumped imports from all other countries accounting for 0.1% of the market.

Therefore, it is incorrect for the Commission to consider *"that there is a limited period when the Australian market was not affected by dumping"* when imports from only two exporters accounting for only 2.1% of the entire Australian market were found to be dumped and causing material injury during 2013. The reported import volumes also show that non-dumped imports accounted for 88% of all imports during 2013 and were found to have undercut the applicant's prices by margins ranging from 4% to 10%.

In contrast, Shagang notes that SEF 301 contains no assessment or analysis of the likely impact of non-dumped imports in the Australian market. For example, there is no analysis of the relative market shares of the various import sources which would explain whether non-dumped imports from Indonesia, New Zealand and Turkey have maintained or increase their individual shares of the market. Given that Graph 2 of SEF 301 shows that Chinese imports replaced those previously supplied by PT. Gunung Rajapaksi from Indonesia and Quintain Steel Co Ltd from Taiwan, it is reasonable to consider that non-dumped imports have maintained a presence in the Australian market.

Likewise, there is no price comparison of rod in coils imports from these non-dumped sources relative to the applicant's selling prices and the subject imports which might demonstrate whether they are undercutting the applicant's prices and whether they are on par with or marginally higher than Chinese imports. Without this type of analysis, the Commission is unable to find as fact that the subject imports led to the applicant's prices being suppressed.

It is noted that the Commission has relied heavily on the analysis outlined in Graph5 of SEF 301. For the reasons outlined below, Shagang finds the graph confusing and misleading given the conclusions drawn from it by the Commission:

- Shagang does not consider that a meaningful price undercutting analysis can be presented through the indexing of different prices. A review of numerous other SEF reports published by the Commission reveals that this method of price undercutting analysis has not previously been utilised. The indexing of prices across different series does not provide a true reflection of the proportional differences between the prices being compared.
- the Commission provides no explanation of the terms of the indexed prices shown in the graph. That is, whether they reflect ex-port to ex-works comparison or whether a comparison of delivered free-in-store (FIS) prices. If based on FIS, the Commission provides no explanation of the information used to adjust importer's selling prices to calculate these FIS prices. Further, there is no explanation of whether prices were adjusted to reflect the same credit terms, noting that [redacted] prices included various terms ranging from [redacted] credit [redacted].
- The legend in the graph refers to the green line as representing the 'Change in Average Prices from June 2014'. It is unclear which prices this series refers to, although the report states later on that the green line represents undumped imports. If the green indexed line does represent imports from non-subject countries, Shagang requests that the Commission provide a meaningful description of the prices and their source. For example, are the undumped import prices based on FIS prices into the market which can be properly compared with prices by the applicant and subject imports? If so, which interested parties provided this information to the investigation? If the information has been derived from an import database, what information was relied upon in order to properly calculate into store prices? Do these prices relate to imports from Indonesia, New Zealand, Turkey or all other countries?
- There appears to be some inconsistency in the applicant's prices shown in Graph 5 which reveals prices remaining relatively steady since June 2014, whereas the prices shown in Graph 3 show a more apparent decline over the same period.

For these reasons, Shagang considers that the Commission has not properly isolated the effects of non-dumped imports. In order to properly identify and explain the interaction between subject imports, non-subject imports and the applicant's prices, a more precise and clearly explained undercutting analysis is required.

<u>Local price premium</u>

It is noted that the Commission identified in REP 240 that in setting its prices into the market, the applicant included a local price premium. On the assumption that the applicant has not changed the way it which it determines and negotiates its prices with local customers, Shagang requests that the

Commission properly examine and isolate the effects of any such price premium from its undercutting analysis.

It is clearly relevant to the Commission's assessment of the effects of other known factors, to understand the impact that the local price premium had on the degree of undercutting found during the investigation period. This issue is particularly relevant in this case given that the majority of the Australian industry's sales of rod in coil are to its related distribution business that competes directly with unrelated customers that source from both local and import suppliers.

The relevance of price premiums in the examination of price undercutting was addressed by the Panel in *EC — Salmon (Norway)*. In considering the argument by the European Communities that the existence of a price premium was irrelevant to the analysis of price undercutting and could only be taken into account when considering the injury margin, the Panel concluded:

> *Merely that the price premium was taken into account in calculating the injury margin does not demonstrate that it was considered and deemed irrelevant to the evaluation of price undercutting. Having identified the existence of a price premium for the domestic product over the imports, we consider that an unbiased and objective investigating authority could not conclude, without explanation, that such price premium had no bearing on the issue of whether there was significant price undercutting. Thus, the investigating authority's finding of significant price undercutting is not consistent with the requirements of Articles 3.1and 3.2.*[5]

Causal link between subject imports and injury

The entire basis of the Commission's finding that the subject imports caused material injury to the applicant centres on the assumption that in the absence of the subject imports, prices of non-subject imports would have been higher and as such, the applicant would have been able to achieve higher prices. This is confirmed by the statement in SEF 301:

> *Specifically, the Commission considers that both OneSteel and other importers would be able to increase their prices in the market if Chinse dumped goods were not being exported to Australia, evidencing price suppression, and that OneSteel's prices would attempt to cover the full CTMS its goods, evidencing price depression caused by the Chinese dumped goods.*

In summary then, it is apparent to Shagang that the Commission's preliminary injury findings are founded upon the mere possibility that the applicant's prices and profits may have attained notional and undefined levels. For the reasons outlined below, Shagang contends that this 'but-for' injury analysis employed by the Commission in this case is fundamentally flawed and insufficiently rigorous to comply with the requirements of section 269TAE of the *Customs Act 1901* (the Act) and Article 3 of the Anti-Dumping Agreement (ADA).

Section 269TG of the Act sets out the matters upon which the Minister must be satisfied in order to exercise his or her power to impose dumping duties. The conditions are that the amount of the export price of the goods is less than the amount of the normal value and, because of that, material injury to an Australian industry producing like goods is caused or threatened.

[5] Panel Report, European Communities – Anti-Dumping Measure on Farmed Salmon from Norway, WT/DS337/R, para 7.640, pages 273.

Subsection 269TAE(1) of the Act sets out a non-exhaustive list of matters that the Minister may have regard to in assessing and determining whether material injury to the Australian industry is being caused by dumped exports. Determinations under subsection 269TAE(1) of the Act are subject to subsections 269TAE(2A) and (2AA) of the Act.

Subsection 269TAE(2A) of the Act requires that injury caused by factors other than dumping not be attributed to the dumped goods, whilst subsection 269TAE(2AA) of the Act requires that the material injury determination "*must be based on facts and not merely on allegations, conjecture or remote possibilities*". [emphasis added]

This provision is reflected in Article 3.1 of the WTO Anti-Dumping Agreement (ADA) which states:

> A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products. [emphasis added]

Therefore it is without doubt that to reach the necessary level of satisfaction required by ss.269TG(2), the Minister's determination is required to be based on positive evidence and an objective examination.

Within that framework, Shagang notes the Commission's view that it "*considers that without the dumped prices from exporters in China, the leverage point would be other importers of the goods at a higher price point, being the minimum non-Chinese import offer. The non-Chinese import offer would also be higher without the influence of the Chinese product at dumped prices.*" This statement highlights the lack of actual and positive evidence to demonstrate that the applicant experienced material injury caused by the subject imports. Instead and at best, it reflects a lower evidentiary standard of mere possibility that future event may occur. By any measure, this does not meet the evidentiary standard required for the Minister to be satisfied. This imprecise assessment is also clearly contrary to the Commission's own stated practice outlined in its Manual in basing findings on a 'but-for' assessment which states that '*[i]t is not sufficient to simply assert such an effect as this will not meet the evidentiary requirements.*'

This is further supported by the finding in *US — Hot-Rolled Steel*[6], where the Appellate Body ruled that "*the term 'positive evidence' relates, in our view, to the quality of the evidence that authorities may rely upon in making a determination.*" It went on to explain that "*[t]he word 'positive' means, to us, that the evidence must be of an affirmative, objective and verifiable character, and that it must be credible.*"

In *Mexico – Anti-Dumping Duties on Rice*[7], the Appellate Body observed that assumptions by an investigating authority should be based on positive evidence:

> *An investigating authority enjoys a certain discretion in adopting a methodology to guide its injury analysis. Within the bounds of this discretion, it may be expected that an investigating authority might have to rely on reasonable assumptions or draw inferences. In doing so, however, the investigating authority must ensure that its determinations are*

[6] Appellate Body Report, US – Anti-dumping measures on certain hot-rolled steel products from Japan, WT/DS184/AB/R, para 192; Page 65.
[7] Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice, WT/DS295/AB/R, para 204; Page 69.

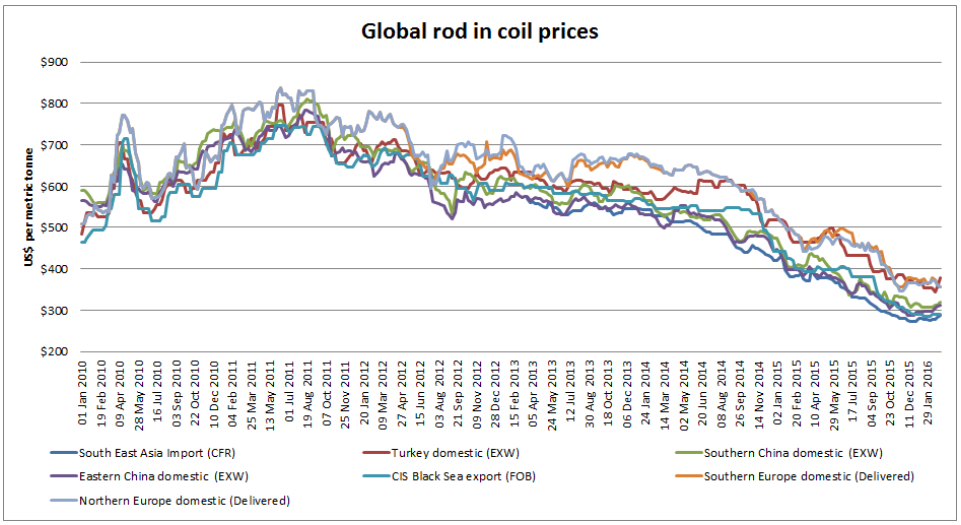
> *based on 'positive evidence'. Thus, when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.*

The Appellate Body went further in that dispute and concluded that an examination on positive evidence is not fulfilled when the assumptions on which the investigating authority's methodology relies are not properly substantiated and explained:

> *An investigating authority that uses a methodology premised on unsubstantiated assumptions does not conduct an examination based on positive evidence. An assumption is not properly substantiated when the investigating authority does not explain why it would be appropriate to use it in the analysis … In the Final Determination, Economía did not explain why [its] assumptions were appropriate and credible in the analysis of the volume and price effects of the dumped imports, or how they would contribute to providing an accurate picture of the volume and price effects of the dumped imports … We would expect an investigating authority to substantiate the reasonableness and credibility of particular assumptions.*[8]

Shagang contends the SEF 301 provides no reasoning or basis for the assumption that the Australian industry's selling prices would have been higher during the investigation period in the absence of dumping.

The assumption that prices of non-subject imports and the applicant would have been higher in a market unaffected by the subject imports seems to stem from the Commission's understanding that the Australian market for rod in coil is price sensitive and "*highly substitutable, and commodity like in nature*". Yet this assumption is flawed when contrasted against the global price trend for rod in coil shown below which has experienced similar declines to that evident in the Australian market. Therefore, it is highly inconsistent for the Commission to suggest that for a product such as rod in coil, which is *"a commodity product freely traded on the world market*", that rod in coil in the Australian market would have experienced price trends opposite to that experienced globally.



[8] Ibid., para 205, page 69.

This type of assumption can only be supported if the Commission is able to identify some particular characteristics or factors evident in the Australian market, that distinguish and shield it from global import competition. However, as the applicant and the Commission have emphasised on numerous occasions in relevant submissions and reports, rod in coil is highly price sensitive and freely traded.

Materiality of injury

It is noted that SEF 301 contains no assessment of the materiality of the applicant's injury that is attributable to the subject imports from China. It appears that the Commission has simply assessed whether the hypothetical injury that it believes may have occurred, can be linked to the subject imports. Yet this is insufficient to be satisfied that the injury caused by the subject imports is 'material'.

Given the Commission's reliance on the but-for analysis and its speculative assessment of the applicant's prices and profits, Shagang questions the reliability of any such assessment of the materiality of the injury attributable to the subject imports. For example, to understand the materiality of the injury caused by the subject imports in the context of the but-for argument presented by the Commission, it requires hypothesising on the extent to which prices of the applicant and non-subject imports would have been higher in the absence of imports from China.

For example, if in the absence of the subject imports the Commission considers that prices would have been A$5/mt higher, then it is not possible to find that the subject imports cause 'material' injury. In a scenario where the Commission considered that prices would have been A$50/mt higher, then it is obviously more likely that the injury caused by the subject imports is material.

In a but-for scenario where the injury cannot actually be measured as it involves hypothesising about future events, Shagang requests the Commission to be particularly mindful of the global trend in rod in coil prices and the ease with which imports can be substituted. In its view, any hypothetical injury would have been immaterial given the depressed prices evident in the global market.

In Shagang's view, it is insufficient for the Commission to simply assume that the applicant's sales would have replaced the subject imports in its entirety, and that other import sources would not have replaced a major portion of the subject imports. A finding of materiality on that basis is clearly one not founded on facts or positive evidence but simply based on conjecture.

Proposed measures

Shagang agrees with the Commission's decision to impose an ad valorem duty rate in the event that it continues to recommend that interim dumping duties be imposed. As noted by the Commission in its final report into rod in coil from Indonesia, Taiwan and Turkey[9]:

> *The Commission notes that the rod in coils market displayed considerable price volatility over the investigation period. As an example the export prices of a verified, non-dumping exporter varied by 18 per cent over the investigation period. The Commission anticipates that the rod in coils market will continue to demonstrate price volatility, and is satisfied that an ad valorem duty is the most appropriate form of duty in this environment.*

[9] Final Report 240 – Rod in coils from Indonesia, Taiwan and Turkey, page 65

> *The Commission is of the view that a combination method is not appropriate in this environment as it become less effective when a market experiences rising prices and punitive when the market experiences falling prices. The ad valorem method avoids these 'effective rate' impacts.*

The Commission again addressed this specific issue in the final report into steel reinforcing bars exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey[10]:

> *Where markets are falling, the combination method can be less desirable because the ascertained export price (which acts as a floor price) is set using historical data obtained in the original investigation period. In a market where prices fluctuate, the ascertained export price can quickly become out of date, however remains as a basis for calculating duty. For this reason, whilst delivering the protective effect, in a falling market, the combination duty method can have adverse effects on downstream industries and can lead to increased reviews.*

A review of the chart on page 11 of this submission shows the clear trend of a decline in global pricing of rod in coil since 2011. In particular, it shows that whilst prices were falling over the investigation period, prices since the end of the investigation period have continued to fall. In this scenario, export prices and normal values determined during the investigation are already outdated.

These price trends are consistent with the Commission's view that fixed and variable duties are not appropriate given that price volatility for rod in coil is expected to continue. The effect of imposing a fixed and variable duty in the circumstance of falling global prices, would be the introduction of an artificial uplift in market prices well above contemporary costs and contemporary normal values.

Conclusion

In conclusion, Shagang has strong concerns about the lack of detailed analysis, meaningful explanation and consistency with its stated approach to various critical aspects of the assessment of injury and causation. The Commission's preliminary findings appear to rely solely on conjectural and hypothesised events in the Australian market which are neither based on facts or positive evidence.

Yours sincerely

John Bracic

[10] Final Report 264 – Steel reinforcing bar from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey, pages 104-105.